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**BEFORE THE  
FEDERAL ELECTION COMMISSION**

**MUR #** 6474 **OFFICE OF GENERAL  
COUNSEL**

Ohio Democratic Party  
David L. Duffey, Operations Director  
340 E Fulton St  
Columbus, OH 43215

**Complainant,**

**v.**

Citizens for Josh Mandel  
Steven R. Cuckler, Treasurer  
50 West Broad Street, Suite 1900  
Columbus, OH 43215

**Respondents.**

**COMPLAINT**

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against Josh Mandel, Citizens for Josh Mandel, and Steven R. Cuckler, treasurer ("Respondents"), for apparent violations of the Federal Election Campaign Act ("FECA" or the "Act"). Several months ago, Mandel ran and was elected State Treasurer of Ohio. It now seems, however, that Mandel is using the resources of his state campaign and the resources of his state office to support a new run for the U.S. Senate. Federal law clearly prohibits this kind of conversion of state campaign and official resources, and the Federal Election Commission ("FEC") should immediately open an investigation to determine the full scope of Mandel's questionable practices.

**A. FACTS**

Josh Mandel was elected State Treasurer of Ohio on November 2, 2010. Then, less than three months after taking office, he started a run for U.S. Senate. Mandel filed his Statement of Candidacy with the FEC on April 6, 2011 and designated "Citizens for

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Josh Mandel" as his principal campaign committee (the "Committee"). Conveniently, "Citizens for Josh Mandel" was the same name of Mandel's committee when he ran for treasurer (the "State Campaign"). However, it appears that a name is not only the thing that Mandel freely transferred from one campaign to the next.

To start, the Committee is utilizing the State Campaign's website and has taken over the domain name www.joshmandel.com at no apparent cost. Presumably using much of the same content and web design work, the Committee has already begun operating the site to raise contributions for the senate campaign. Next, the Committee seems to have also picked up emailing the State Campaign's email list right where the State Campaign left off in November. Again, this valuable transfer of the email list asset was presumably done without cost to the Committee. Given this pattern, the Commission should investigate to determine what other resources the State Campaign may have freely handed over to the Committee, especially since Mandel switched from running for state office to running for federal office so quickly.

In addition to co-opting the assets of the State Campaign, Mandel is also using the resources of his state office to operate the Committee and support his run for senate. Mandel has apparently been having his office research and draft releases trumpeting his accomplishments, which are then posted on the Committee's website and emailed to the old State Campaign email list, just as if they were generated by the Committee itself.<sup>1</sup> Content apparently drafted by the Treasurer's office also appears on Mandel's Facebook pages, including with a "Paid for by Citizens for Josh Mandel"

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<sup>1</sup> For example, compare the "E-Newsletter Update from Treasurer Mandel" available on the State Treasurer's website, <http://www.tos.ohio.gov/NewsEvents.aspx?NewsId=279>, with the "Treasurer's Office Update," available on the Committee's website, <http://www.joshmandel.com/news/2011/03/treasurers-office-update-march-21-2011>. See also Exhibit A.

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disclaimer.<sup>2</sup> It seems that the Office of the State Treasurer of Ohio is creating political content for Mandel so that he does not have to pay campaign staff to do the same thing. As State Treasurer, Mr. Mandel should understand how critical it is to ensure that the State's resources are used responsibly, which should not include funding his run for Senate.

**B. LEGAL ARGUMENT:**

- 1. The FEC should investigate whether Citizens for Josh Mandel has accepted a prohibited transfer of assets from the State Campaign.**

The Act places limitations and prohibitions on the sources and amounts of contributions to a federal election campaign. The campaign committee of a candidate for federal office is permitted to raise money only from certain sources, including individuals, partnerships, and political action committees. See 2 U.S.C. § 441a. Many states impose fewer restrictions on contributions to campaigns for state elective offices. For example, corporations may be permitted to make contributions to candidates for state office while such contributions are prohibited under federal law. See 2 U.S.C. § 441b. In Ohio specifically, individuals and PACs are permitted to make contributions in far excess of the federal limits. This disparity creates concerns about the injection of "soft money" into federal elections in the form of transfers between a candidate's state campaign and federal campaign committee. Explanation and Justification, Transfer of Funds from State to Federal Campaigns, 57 Fed. Reg. 36344 (Aug. 12, 1992).

<sup>2</sup> Compare <http://www.tos.ohio.gov/MccTreasury.aspx?ViewBio=1&Bioid=1> and <http://www.tos.ohio.gov/NewsEvents.aspx?NewsId=279> with <http://www.facebook.com/home.php#!/josh.mandel.ohio?sk=info> and [http://www.facebook.com/note.php?note\\_id=10150192971562500#!/note.php?note\\_id=10150125476417500](http://www.facebook.com/note.php?note_id=10150192971562500#!/note.php?note_id=10150125476417500).

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In order to preserve the integrity of the federal election process, the FEC enacted regulations to specifically prohibit "transfers of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election." 11 C.F.R. § 110.3(d) (emphasis added). As explained by the Commission, this blanket prohibition is a necessary means for ensuring that only permissible funds under the Act are used in connection with a campaign for federal elective office. Explanation and Justification, 57 Fed. Reg. at 36345. Assets may simply not be transferred from a state campaign committee to a federal committee if the federal committee does not pay the full fair market value.

Here, the Committee appears to be utilizing the e-mail list of the State Campaign and to have taken over its website without paying for this use. The Commission has specifically stated that if a "federal campaign committee intends to use a mailing list compiled by the state campaign, the federal campaign must purchase the list at fair market value. The mailing list is an asset of the state campaign, and any transfer for less than fair market value would violate" the regulation. *Id.* Similarly, a website that expressly advocates the election of a Federal candidate, such as www.joshmandel.com, is considered "something of value" under the Act. See FEC Advis. Op. 1998-22. The website was originally owned by, and the costs associated with the creation and development were paid for by, the state campaign. As soon as Mr. Mandel announced his candidacy for U.S. Senate, he transformed the website into a platform for his federal campaign, including for raising federal contributions. Therefore, the use of the website constitutes another prohibited transfer of an asset of the State Campaign.

**2. Citizens for Josh Mandel may have accepted a prohibited contribution from the State of Ohio.**

The Act limits the amount of money that any "person" may contribute to Federal candidates and political committees. 2 U.S.C. § 441a(a). For these purposes, the only government that is not considered to be a person is the Federal Government. See 2 U.S.C. § 431(11). The Commission has declined to extend this exemption to State governments or their instrumentalities. See FEC Advis. Op. 1998-07 n. 3, citing FEC Advis. Op. 1982-26, 1977-32 (finding that state owned corporations were subject to the corporate prohibitions of the Act). Further, the Commission has stated that such entities are subject to the contribution restrictions of the Act. FEC Advis. Op. 2000-05 n. 3. When considered a corporation, a contribution from a state government entity is prohibited, and even if a contribution from the State of Ohio to the Committee were permissible, it would still be subject to the contribution limits of the Act. Under these limits, a State government would only be permitted to contribute \$2,500 per election to a candidate for U.S. Senate.

A "contribution" includes "anything of value made by any person for the purpose of influencing any election for Federal office." *Id.* § 431(8)(A)(i). "Anything of value" includes "all in-kind contributions" and "the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services." 11 C.F.R. § 100.52(d)(1). Further, "[e]xamples of such goods or services include, but are not limited to: Securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists. *Id.*

In his official capacity as State Treasurer, Mr. Mandel has apparently devoted State resources to publishing materials which describe his political accomplishments to

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date. These materials, and the resources used to develop them, are clearly "goods and services," as described above. Since these goods and services appear to have been provided to the Committee at no charge, they constitute an "in-kind contribution" to the campaign from the State of Ohio.

Assuming a State is not permitted to make an in-kind contribution to a Federal candidate's campaign, the Committee appears to have accepted a prohibited contribution. However, even if such a contribution is not completely prohibited, to the extent the value of the official resources utilized, including staff time spent developing the materials, is in excess of \$2,500 per election, the Committee has accepted a contribution in violation of the contribution limits.


**C. REQUESTED ACTION**

Given the evidence described above, the FEC should investigate whether Respondents violated federal law. Should the Commission determine that Respondents have done so, we request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,

  
David L. Duffey

SUBSCRIBED AND SWORN to before me this 4th day of June, 2011.

  
Notary Public

My Commission Expires:

6-24-12



TERESA COTTINGHAM  
Notary Public, State of Ohio  
My Commission Expires 06-24-2012

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## Exhibit A

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JOSEF MANDEL  
STATE TREASURER OF OHIO

MEET THE TREASURY

FOR YOU

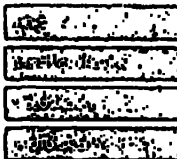
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## E-Newsletter Update from Treasurer Mandel

E-Newsletter Update from Treasurer Mandel

On a rainy morning in January, I met with a group of residents out of state, an economy trying to recover from a recession, and I was discussing with a group of business leaders the impact of the recent economic downturn. We discussed the challenges facing businesses and local governments, the Ohio Treasury's role in providing technical assistance and being a resource, and the state's role in providing a stable environment for our citizens.



With the Legislature in full swing and the Governor's budget announced, the budget process is in full swing. We are working with the Legislature to ensure that the state's budget is responsible and fiscally sound. We are also working with the Governor's office to ensure that the state's budget is responsible and fiscally sound. We are also working with the Governor's office to ensure that the state's budget is responsible and fiscally sound.

Continuing on Low Unemployment: The department of Civil Management is exploring ways to take advantage of the historically low municipal borrowing rates and is looking for opportunities to re-finance some of the more than \$3 billion in outstanding municipal debt we manage for the taxpayers. Farmers are re-paying their mortgages and debt to capitalize on low rates, which were reduced before these businesses were sold.

Leveraging Tax Dollars: The department recently announced the use of the process of professionalizing the state's fleet to be more efficient and reduce operating expenses. For example, instead of purchasing many trucks, we are purchasing a few trucks in bulk and then leasing them. This is a more efficient way to manage the state's fleet. We are also working with the Governor's office to ensure that the state's budget is responsible and fiscally sound.

Advocating for Fiscal Responsibility: In our State Budget, the Governor's budget is the largest in our state's history. This week, state leaders are working on the process of formulating a two-year budget. It is important that we ensure that the budget is responsible and fiscally sound. We are also working with the Governor's office to ensure that the state's budget is responsible and fiscally sound.

Expanding Public Learning Opportunities: The department recently announced the use of the process of professionalizing the state's fleet to be more efficient and reduce operating expenses. For example, instead of purchasing many trucks, we are purchasing a few trucks in bulk and then leasing them. This is a more efficient way to manage the state's fleet. We are also working with the Governor's office to ensure that the state's budget is responsible and fiscally sound.

Participating in Consumer Protection Week: In January, the department participated in Consumer Protection Week. We were joined by the Attorney General's office and the State's consumer protection agencies. We discussed the challenges facing consumers and the state's role in providing a stable environment for our citizens.

"Ask Josh": Complaint Service and Business Assistance: A top priority of mine is to ensure that the Treasurer's office can help citizens and businesses. We have created an "Ask Josh" section on our website to provide a place where citizens and businesses can ask questions and get answers. We are also working with the Governor's office to ensure that the state's budget is responsible and fiscally sound.

These are just a few of the many events occurring in the Treasurer's office. We will continue to work with the Governor's office to ensure that the state's budget is responsible and fiscally sound. We are also working with the Governor's office to ensure that the state's budget is responsible and fiscally sound.

Respectfully,  
Josef

Josef Mandel, State Treasurer of Ohio

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## Treasurer's Office Update: March 21, 2011

With the Legislature in full swing and the Governor having unveiled his budget proposal, my office is deeply involved with the restoration of fiscal responsibility and business-friendly policies to our state. Most importantly though, we continue to run a disciplined and financially sound Treasurer's office, and I thought you might enjoy another update on some of the many activities in my office...

**Capitalizing on Low Municipal Bond Rates:** My department of Debt Management is exploring ways to take advantage of the historically low municipal borrowing rates and is looking for opportunities to "re-finance" some of the more than \$3 billion in outstanding principal that we manage for the taxpayers. Payments are re-issuing their mortgages and debt in capitalize on low rates and the state should explore these possibilities as well.

**Leveraging Technology to Modernize Banking Practices:** We are in the process of modernizing our financial systems to be in line with modern banking practices. For instance, instead of physically driving checks received in Columbus to a bank in Cleveland every day, as we learned has been the recent practice, we are in the process of modernizing this system to make it electronically capture and transfer this information. My direction to our staff is clear: "If you are an individual citizen can deposit a check on your iPhone, the state should be able to find a faster cost-effective way than a mail that not only could be damaged and reduce that person's money."

**Advocating for Fiscal Conservatism in our State Budget Update:** Ohio's current \$8 billion budget shortage is the largest in our state's history. This week, state lawmakers began the process of formulating a two-year budget. It's important that lawmakers make the fiscally sound decisions needed to cut spending and balance our budget. It is time that state government digests its belt, just like Ohio families and businesses have been doing. And I will continue to lead the dig-spenders' feet to the top line as we restore fiscal sanity to our state government.

**Expanding Distance Learning Opportunities for Governmental Fiscal Officers:** Our office is looking at expanding online learning for government fiscal officers, who are required to take continuing education courses through our Center for Public Investment Management. Again, leveraging technology to make tax dollars go farther, we can save time and money by offering distance learning financial seminars, instead of forcing local government CFO's to travel across the state for costly events.

**Participating in Consumer Protection Efforts:** In Kettering (Montgomery County) and Oak Hills (Anderson County), my office recently participated in national Consumer Protection Week events, sponsored by Attorney General Mike DeWine. Some of our most valued and vulnerable citizens are seniors, and I was proud to partner with private sector companies and Attorney General DeWine to educate these seniors on how to protect themselves against fraud and identity theft.

**"Ask Josh" - Constituent Service and Business Assistance:** A top priority of mine is to ensure that the Treasurer's office can help citizens and businesses cut through government red tape and anti-capitalist bureaucracy. We have assembled a top-notch constituent affairs team that is dedicated to helping citizens better manage government and spend time on growing their businesses rather than being bounced around the bureaucracy. We have created an "Ask Josh" section on our website to receive questions and help solve problems for Ohioans. I would encourage you to visit this page if you have issues relating to state government or anything else that we might be able to help with. If you prefer, you can also send me a message to [constituentaffairs@treasury.ohio.gov](mailto:constituentaffairs@treasury.ohio.gov).

These are just a few of the many activities occurring in the Treasurer's office. We will continue rolling out fresh ideas and fiscally conservative leadership, and I encourage you to send feedback and thoughts as your time permits. As always, please never hesitate to contact me anytime for anything.

Best regards,  
Josh

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When Josh ran for State Representative, he knocked on 19,679 doors and wore out three pairs of shoes listening to citizens.



During his journey to become Ohio Treasurer, he logged 110,653 miles listening to the concerns of Ohioans.

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